EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Supreme Court, U.S.
FILED
MAR 21 1991
OFFICE OF THE CLERK

NO. 90-1405

IN THE SUPREME COURT OF THE

UNITED STATES

ORIGINAL

OCTOBER TERM, 1990

STATE OF ALABAMA,

PETITIONER,

V.

JOE LOUIS HARRELL

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND COURT
OF CRIMINAL APPEALS OF ALABAMA

OPPOSING BRIEF

OF

PAUL D. BROWN
ATTORNEY FOR RESPONDENT

ADDRESS OF COUNSEL:

P. O. BOX 40456
MOBILE, ALABAMA 36640-0456
(205) 438-4691

STATEMENT OF QUESTIONS PRESENTED

WHETHER THE DISMISSAL BY THE TRIAL COURT IN THE CASES AGAINST RESPONDENT TWO DAYS PRIOR TO THE PETITION FOR CERTIORARI BEING FILED WITH THIS COURT RENDERS THIS CASE MOOT.

STATEMENT OF THE CASE

On February 20, 1991 on Motion of the State of Alabama through the Mobile County District Attorney's Office the two cases pending against the Respondent were dismissed.

REASONS FOR DENYING THE WRIT

Two days before the State of Alabama filed its Petition for a Writ of Certiorari with this Honorable Court the underlying cases against the Respondent were dismissed.

The undersigned respectfully submits that there is no possibility of Respondent suffering "collateral legal consequences" from the dismissal of the charges against him Petitioner's cause is moot and should be dismissed.

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 21st day of March, 1991, served a copy of the foregoing on Joseph G. L. Marston, III, Esq., Assistant Attorney General, Office of the Attorney General, Alabama State House, 11 South Union Street, Montgomery, Alabama, 36130, and on Joe Louis Harrell, AIS NO. 139810, Fountain 38, Atmore, Alabama, 36503, by depositing same in the United States mail, properly addressed and first class postage prepaid.

PAUL D. BROWN

Supreme Court, U.S.
FILED
MAR 21 1991
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90-1405
NO. 1405

IN THE SUPREME COURT OF THE

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OCTOBER TERM, 1990

STATE OF ALABAMA,

PETITIONER,

V.

JOE LOUIS HARRELL

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND COURT
OF CRIMINAL APPEALS OF ALABAMA

APPENDIX TO THE OPPOSING BRIEF

OF

PAUL D. BROWN
ATTORNEY FOR RESPONDENT

ADDRESS OF COUNSEL:

P. O. BOX 40456
MOBILE, ALABAMA 36640-0456
(205) 438-4691

TABLE OF APENDICIES

APPENDIX A,

CERTIFIED COPY OF THE CASE ACTION SUMMERY IN CC 88-830, 88-831.....1

CERTIFICATE OF SERVICE.....17

STATE OF ALABAMA) JOE LOUIS HARRELL

COUNTY OF MOBILE) CC88-830,88-831

I, SUSAN F. WILSON, CLERK OF THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA, DO HEREBY CERTIFY THAT THIS IS A TRUE, CORRECT AND ACCURATE COPY OF THE JUDGMENT IN THIS CASE, AS THE SAME REMAINS OF RECORD IN MY OFFICE.

WITNESS MY HAND THIS THE 4th. DAY OF March 19 91 .

CLERK OF THE CIRCUIT COURT,
MOBILE COUNTY, ALABAMA.

BY Vern
Susan F. Wilson

Consolidated with 88-831

CASE ACTION SUMMARY
CIRCUIT CRIMINAL

CASE: CC 88 000830 00

IN THE CIRCUIT COURT OF MOBILE COUNTY

JUDGE: EBH

STATE OF ALABAMA VS HARRELL JOE LOUIS
MOB. CO. JAIL-P O BOX 104
MOBILE, AL. 36602

Kittall

CASE: CC 88 000830 00

CHARGE: POSS. COCAINE TYPE: F

LITERAL: VAUCSA-POSSESSION DRUGS

DEFENDANT STATUS: JAIL

DEFENSE ATTORNEY: JEFF DEEN

PROSECUTOR: GALANOS, CHRIS N/Murphree

OFFICER: COUNSEL: R

DATE OF BIRTH: 12/07/50

RACE: B SEX: M

ALIAS NAME:

AGENCY

DC CASE NUMBER: DC 88 030138 Q

GRAND JURY NUMBER: 479

ADDITIONAL INFORMATION AND REMARKS:

DATE WAR/CAP ISSUED: __/__/__

DATE ARRESTED: 01/02/88

DATE HEARING: __/__/__

DATE RELEASED: 01/03/88

DATE ARRAIGNED: 04/06/88

DATE TRIAL: 5/3/88 6/7/88 2/25/91

BOND/TYPE SURETIES:

BOND AMOUNT: $000000.00

DATE INDICTED: 03/18/88

DATE FILED: 03/18/88

WORTHLESS CHECK NO:

COURT REPORTER:

SID NO: STATUS DOCKET 4-22-88

[redacted]

Recvd 4-14-88

DATE	ACTIONS, JUDGMENTS, CASE NOTES
4-6-88:	Defendant waived reading of indictment and pleaded not guilty and reserved the right to file special pleas within 20 days. Defendant's attorney, Jeff Deen, in court.
4-22-88	Case to be tried. [illegible] State Board of Pardons and Paroles ordered to make a [illegible]
	Motion to Consolidate Offenses filed by the State April 26,1988
	Motion to Suppress Evidence filed by defendant's attorney, T. Jefferson Deen, III, April 26,1988
	Motion to Suppress Statements filed by defendant's attorney T. Jefferson Deen, III, April 26,1988
4-29-88	Motion to Consolidate Offenses filed by the State, April 26, 1988- Granted.
5-3-88	Case crowded out. Ready for trial 5-4-88 at 8:30 a.m.

6/14/88 Attorney, Barbara Brown, Attorney at Law, appointed to represent ~~the defendant on his appeal to the Court of Criminal Appeals.~~
Angie Johnson

Carol D. Eskridge and Sharon B. Carrell/ Official Court Reporters are hereby ordered to transcribe testimony and proceedings had at the trial of this case and to file transcript of Testimony and proceedings with the Clerk of the Circuit Court of Mobile County, Alabama to be paid by the State of Alabama

J16 J31 A09 56 LETTER OF TRANSMITTAL OF NOTICE OF APPEAL TO THE COURT OF CRIMINAL ~~APPEALS BY TRIAL CLERK AND NOTICE OF APPEAL TO THE COURT OF~~ CRIMINAL APPEALS OF ALABAMA, MAILED JUNE 17th,1988

Notice of appeal filed by defendant's attorney, Barbara Brown, July 11th, 1988

Notice of appearance filed by defendant's attorney, Barbara Brown, July 11th, 1988

8/9/88 A22 S06 28 Order granting extension of 28 days for filing Court Reporter's Transcript.

SEP 06 1988 S13 Request of Court Reporter for Court of Criminal Appeals to grant extension of 7 days from September 6 1988 for filing Court Reporter's Transcript.

SEP 14 1988 ~~Order Received from Court of Criminal Appeals granting~~ ~~of~~ 7 days for filing Court Reporter's Transcript.

9/13/88 TRANSCRIPT MAILED TO COURT OF CRIMINAL APPEALS

9/13/88 COPY OF TRANSCRIPT MAILED TO ATTORNEY GENERAL

Date	Page No. 5 ACTIONS (Continued)	Case Number CC88-830 (ID YR NUMBER)
JUN 16 1989	Notice received from Court of Criminal Appeals- Application for rehearing overruled - No opinion. Judgment not final. Rule 39 (k) motion denied	
12/6/89	Certificate of Remand received from Court of Criminal Appeals - November 9th,1989 The Court of Criminal Appeals is affirmed by the Supreme Court of Alabama. Return to remand to be filed in the Court of Criminal Appeals.	
12/21/89	Batson hearing reset for 12/22/89. Defendant's attorney, Paul Brown, in court.	
2/22/89	Batson hearing reset for 12/28/89. Defendant's attorney, Paul Brown, in court.	
12/28/89	Batson hearing reset for 1/4/90.	
1/4/90	Batson hearing reset for 1/5/90. Defendant's attorney, Paul Brown, in court.	
NGIE JOHNSON COURT REPORTER DATE 1-5-90		
01-05-90	~~Batson Hearing had and taken under submission.~~ Defendant's attorney, Paul Brown, in court.	
/17/90	The Court finds that the Prosecutor has failed to provide the Court with facially race neutral reasons for its peremptory challenges which are credible under the Law. It is ordered, pursuant to the order of the Court of Criminal Appeals, that a copy of this order be forwarded to the Court of Ciminal Appeals for further proceedings. (Signed order in file)	

ALABAMA JUDICIAL INFORMATION CENTER

CASE ACTION SUMMARY
CIRCUIT CRIMINAL

CASE: CC 88 000830 01

IN THE CIRCUIT COURT OF MOBILE COUNTY JUDGE: BLK

STATE OF ALABAMA VS HARRELL JOE LOUIS
PENITENTIARY

CASE: CC 88 000830 01

CHARGE: POSS. COCAINE TYPE: O	DATE WAR/CAP ISSUED: __/__/__
LITERAL: PETITION-RELIEF F/CONVICT	DATE ARRESTED: __/__/__
DEFENDANT STATUS: PRISON	DATE HEARING: __/__/__
DEFENSE ATTORNEY:	DATE RELEASED: __/__/__
PROSECUTOR:	DATE ARRAIGNED: _____
OFFICER: COUNSEL:	DATE TRIAL: 11-8-88 _____
DATE OF BIRTH:	BOND/TYPE SURETIES:
RACE: SEX:	BOND AMOUNT: $000000 . 00
ALIAS NAME: _____	DATE INDICTED: __/__/__
AGENCY:	DATE FILED: 10/21/88
DC CASE NUMBER: 00 000000 00	WORTHLESS CHECK NO: _____
GRAND JURY NUMBER:	COURT REPORTER: _____
ADDITIONAL INFORMATION AND REMARKS:	SID NO:

DATE	ACTIONS, JUDGMENTS, CASE NOTES
	11-8-88
	Petition for Relief from Conviction or Sentence filed by the defendant October 21,1988
	Response to Petition for Relief from Conviction or Sentence filed by the State October 24,1988
11/8/88	Petition for Relief from Conviction or Sentence filed by the defendant October 21, 1988.- DENIED. Case is on appeal.

Consolidated with 88-831

ALABAMA JUDICIAL INFORMATION CENTER

CASE ACTION SUMMARY
CIRCUIT CRIMINAL

CASE CC 88 000831 00

IN THE CIRCUIT COURT OF MOBILE COUNTY

JUDGE: ~~EBH~~ Pittman

STATE OF ALABAMA VS HARRELL JOE LOUIS
MOB CO JAIL-P O BOX 204
MOBILE, AL 36602

CASE: CC 88 000831 00

CHARGE: POS. MARIJ. 1 TYPE: F

LITERAL: POSSESSION MARIJUANA 1

DEFENDANT STATUS: JAIL

DEFENSE ATTORNEY: JEFF DEEN

PROSECUTOR: GALANOS, CHRIS N/Murphree

OFFICER: COUNSEL: R

DATE OF BIRTH: 12/07/50

RACE: B SEX: M

ALIAS NAME: _____

AGENCY:

DC CASE NUMBER: DC 88 030139 00

GRAND JURY NUMBER: 179A

ADDITIONAL INFORMATION AND REMARKS:

DEFT ~~88-830~~ 831

Motions 6-11-88

DATE WAR/CAP ISSUED: __/__/__

DATE ARRESTED: 01/02/88

DATE HEARING: __/__/__

DATE RELEASED: 01/03/88

DATE ARRAIGNED: 04/06/88

DATE TRIAL: 5/3/88 6/7/88 2/25/91

BOND/TYPE SURETIES:

BOND AMOUNT: $C00000.00

DATE INDICTED: 03/18/88

DATE FILED: 03/18/88

WORTHLESS CHECK NO: _____

COURT REPORTER: _____

SID NO:

STATUS DOCKET 4-22-88

COMP. CASES 88-832 THRU 835

DATE	ACTIONS, JUDGMENTS, CASE NOTES
4-6-88	Defendant waived reading of indictment and pleaded not guilty and reserved the right to file special pleas within 20 days. Defendant's attorney, Jeff Deen, in court.
4-22-88	Case to be tried.
	4/29/88 mr Motion to Consolidate Offenses filed by the State April 26,1988
	Trial Motion to Suppress Evidence filed by defendant's attorney, T. Jefferson Deen, III, April 26,1988
	Trial Motion to Suppress Statements filed by defendant's attorney, T. Jefferson Deen, III, April 26,1988
4-28-88	Motion to Consolidate Offenses filed by the State, April 26, 1988- Granted.
5-3-88	Case crowded out, Reset for trial 5-4-88 at 8:30 a.m. Defendant's attorney, Jeff Deen, in court.

Date	Page No. _____ ACTIONS (Continued)	Case Number CC 88 831 (ID YR NUMBER)
6/14/88	Attorney, Barbara Brown, Attorney at Law, appointed to represent the defendant on his appeal to the Court of Criminal Appeals.	
	Carol D. Eskridge and Sharon B. Carrell, Angie Johnson Official Court Reporter are hereby ordered to transcribe testimony and proceedings had at the trial of this case and to file transcript of testimony and proceedings with the Clerk of the Circuit Court of Mobile County, Alabama to be paid by the State of Alabama.	
J16 J31 A09 56	LETTER OF TRANSMITTAL OF NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS BY TRIAL CLERK AND NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS OF ALABAMA, MAILED JUNE 17th,1988	
	Notice of appeal filed by defendant's attorney, Barbara Brown, July 11th,1988	
	Notice of appearance filed by defendant's attorney, Barbara Brown, July 11th, 1988	
8/9/88 A22 S06 28	Order granting extension of 28 days for filing Court Reporter's Transcript.	
SEP 0 6 1988 . S13	Request of Court Reporter for Court of Criminal Appeals to grant extension of 7 days from September 6, 19 88 for filing Court Reporter's Transcript.	
SEP 1 4 1988	Order Received from Court of Criminal Appeals granting extension of 7 days for filing Court Reporter's Transcript.	
9/13/88	TRANSCRIPT MAILED TO COURT OF CRIMINAL APPEALS	
9/13/88	COPY OF TRANSCRIPT MAILED TO ATTORNEY GENERAL	

Date	Page No. 5 ACTIONS (Continued)	Case Number
		ID YR NUMBER
JUN 16 1989	Notice received from Court of Criminal Appeals- Application for rehearing overruled - No opinion- Judgment not final.	
	Rule 39 (k) motion denied	
12/6/89	Certificate of remand received from Court of Criminal Appeals - November 9th,1989 The Court of Criminal Appeals is affirmed by the Supreme Court of Alabama. Return to remand to be filed in the Court of Criminal Appeals.	
12/21/89	Batson hearing reset for 12/22/89. Defendant's attorney, Paul Brown, in court.	
12/22/89	Batson hearing reset for 12/28/89. Defendant's attorney, Paul Brown, in court.	
12/28/89	Batson hearing reset for 1/4/90.	
1/4/90	Batson hearing reset for 1/5/90. Defendant's attorney, Paul Brown, in court.	
NGIE JOHNSON COURT REPORTER		
1-5-90		
01-05-90	Batson Hearing had and taken under submission. Defendant's attorney, Paul Brown, in court.	
1/17/90	The court finds that the Prosecutor has failed to provide the Court with facially race neutral reasons for its peremptory challenges which are credible under the Law. It is ordered, pursuant to the order of the Court of Criminal Appeals, that a copy of this order be forwarded to the Court of Criminal Appeals for further proceedings. (Signed order in file.)	

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 21st day of March, 1991, served a copy of the foregoing on Joseph G. L. Marston, III, Esq., Assistant Attorney General, Office of the Attorney General, Alabama State House, 11 South Union Street, Montgomery, Alabama, 36130, and on Joe Louis Harrell, AIS NO. 139810, Fountain 38, Atmore, Alabama, 36503, by depositing same in the United States mail, properly addressed and first class postage prepaid.

PAUL D. BROWN

MOORE, BOLLER & BROWN
ATTORNEYS AT LAW
920 DAUPHIN STREET
P.O. BOX 40456
MOBILE, ALABAMA 36640-0456
(205) 438-4691

FAX (205) 438-4693

JAMES E. MOORE
THOMAS R. BOLLER
PAUL D. BROWN

March 20, 1991

RECEIVED
MAR 25 1991
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Joseph F. Spaniol, Jr., Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

RE: Alabama v. Joe Louis Harrell, No. 90-1405

Dear Mr. Spaniol:

Please find enclosed my Motion to Proceed In Forma Pauperis along with the response to the Petition for Certiorari to be filed in this matter. It is my understanding that the forty (40) copies of the Brief in Opposition reproduced in a manner permitted under Rule 33.1 are not required if the Court allows the Respondent to appear in forma pauperis.

Also please note my correct address as follows:

Paul D. Brown
P. O. Box 40456
Mobile, Alabama 36640-0456

Very truly yours

Paul Brown

PDB/fb
Enclosure
cc: Hon. Joseph G. L. Marston, III
Assistant Attorney General

Joe Louis Harrell